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No. 82-738

In The
Supreme Court of the United States
October Term, 1982

DR. ETHEL D. MIGRA,
Petitioner,

vs.

WARREN CITY SCHOOL DISTRICT
BOARD OF EDUCATION, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed October 19, 1982.
Certiorari Granted January 10, 1983.

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TABLE OF CONTENTS

	Page
Docket Entries	1
Complaint, Federal Court	3
Answer of Warren City School District Board of Education in Federal Court	13
Answer of Individual Defendants in Federal Court	16
Motion for Summary Judgment filed in Federal Court by Individual Defendants Reuben, Tesner and Milheim	21
Motion for Summary Judgment filed in Federal Court by Defendants Swan, Angelo, Reuben, Tesner, Milheim, and Miller	22
Motion for Summary Judgment filed in Federal Court by Warren City School District Board of Education	23
Complaint filed in Common Pleas Court, Trumbull County	25
Findings of Fact and Conclusions of Law, Judge Ford	30
Opinion of Judge Ford, March 20, 1980	39
Plaintiff's Motion to Dismiss Common Pleas Court action	53
Judgment Entry of Judge Ford	54

The following documents have not been reproduced in the Joint Appendix inasmuch as they appear in the Appendix to the Petition for Writ of Certiorari.

Order of the United States District Court of Appeals for the Sixth Circuit, filed June 3, 1982	P. A.-15
Order of the United States Court of Appeals, Sixth Circuit, filed July 27, 1982	P. B-16
Order of the United States District Court, Feb. 17, 1981	PP. C-17 - C-31
Final Judgment Order of the United States District Court, filed February 17, 1981	P. D-32

DOCKET ENTRY

Date	NR	Proceedings
1980		
7/10/80	1	COMPLAINT filed. Summons issued. Copies of Complaint with copies of summons to United States Marshal.
7/10/80	2	PLAINTIFF'S Request for the production of documents filed. Copies issued.
7/10/80		INITIAL ORDER issued.
		DECISION as to The Magistrate Exercising Jurisdiction issued.
7/21/80	3	PRETRIAL Order filed. Manos, J.
7/31/80	4	SUMMONS returned and filed.—Served Henry J. Angelo 7/26/80; served Willard T. Reuben 7/26/80; served Catherine O. Swan 7/26/80; FEES: $9.00
8/ 6/80	5	SUMMONS returned and filed.—Served Robert Peques 7/29/80; served Raymond Tesner 7/28/80; served Mary Milheim 7/28/80; served The Warren City School District Board of Education 7/29/80; FEES: $12.00
8/14/80	6	SUMMONS returned and filed.—Served Barbara Miller 8/1/80; FEES: $3.00
8/14/80	7	ANSWER of Defts., Catherine O. Swan, Henry J. Angelo, Willard T. Reuben, Raymond Tesner, Mary Milheim & Barbara Miller to the complaint filed. copies mailed 8/12/80
8/13/80	8	ANSWER of Deft., The Warren City School District Board of Education filed. copies mailed 8/13/80
9/ 9/80	9	DECISION as to the Magistrate exercising Jurisdiction returned and filed.—all parties *do not* consent to have a Magistrate conduct any & all further proceedings.
9/10/80	10	MOTION of Individual Defts., Reuben, Tesner, & Milheim for Summary Judgment, with memorandum in support and

affidavits in support filed. copies mailed 9/10/80

9/10/80 11 ENTRY of Michael J. Loughman as additional trial counsel on behalf of Defts., filed. copies delivered 9/10/80

9/26/80 12 MOTION of Defts., Swan, Angelo, Reuben, Tesner, Milheim & Miller for Summary Judgment, with memorandum in support filed. copies mailed 9/24/80

10/ 3/80 13 MOTION of Deft., The Warren City School Dist. Board of Education for Summary Judgment, with memorandum in support and affidavit and exhibits in support filed. copies mailed 10/3/80

10/14/80 14 BRIEF of Pltf., in opposition to motion for Summary Judgment of Defts., Swan, Angelo, Reuben, Tesner, Milheim & Miller & Deft., City School Warren City School District Board of Education filed. copies mailed 10/10/80

1981

2/17/81 15 ORDER granting defts. motion for Summary Judgment. The court finds there are no genuine issues of material fact to be litigated & grants the defts. motion of Summary Judgment, based on res *judicata* and the running of the statute of Limitations filed. Manos, J.—copies mailed (noted 2/18/81)

2/17/81 16 FINAL JUDGMENT Order, pursuant to the Order and opinion issued on this date, the motions of the defts., for Summary Judgment are granted filed. Manos, J. copies mailed (noted 2/18/81)

1982

3/13/82 NOTICE of Appeal by pltf. re: 2/17/81 filed. c/m to Vintilla, Messenger, Loughman & USCA 3/16/81

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C80-1183-Y

DR. ETHEL D. MIGRA,
2840 Sheridan Road, Evanston, Illinois 60201,
Plaintiff,

vs.

THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, 261 Monroe Street, N. W., Warren Ohio 44482; CATHERINE O. SWAN, 349 Porter Street, N. E., Warren, Ohio 44483; HENRY J. ANGELO, 195 Oak Knoll, N. E., Warren, Ohio 44483; WILLARD T. REUBEN, 547 Perkinswood, N. E., Warren, Ohio 44483; RAYMOND TESNER, 868 Kenmore, N. E., Warren, Ohio 44483; MARY MILHEIM, 3090 Foster Drive, Warren, Ohio 44483; BARBARA MILLER, 23 Monestary Road, Savannah, Georgia 31411; ROBERT PEQUES, 261 Monroe Street, N. W., Warren, Ohio 44482,
Defendants.

COMPLAINT WITH JURY DEMAND
(Filed July 10, 1980)

1. This is a proceeding to redress the violations of rights guaranteed to the plaintiff by the Constitution of the United States. The action arises under the First, Fifth, and Fourteenth Amendments to the Constitution, and Sections 1983 and 1985 of Title 42 of the United States Code, as hereinafter more fully appears. Jurisdiction is conferred on this Court by 28 U. S. C., Section 1331 (a), and 1343 (3). The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

2. The individual defendants, Catherine O. Swan, Henry J. Angelo, Barbara Miller, Willard T. Reuben, Raymond Tesner, and Mary Milheim, are now and were

at all times material hereto the duly elected, qualified and acting members of the Warren City School District Board of Education, and have under their control all the respective officials and teachers of all public schools within the City of Warren, Ohio. The defendant-board has general supervision over the enforcement of rules and regulations prescribed by it for the conduct of all public schools within said City. The individual defendants and all the officials and teachers of the various public schools of said City are agents, servants, and employees of the Warren City School District Board of Education in the enforcement of all said rules and regulations.

3. At all times pertinent to this Complaint, the defendants, in doing the acts and things hereinafter set forth, were acting, in their respective capacities as stated, under color of the laws of the State of Ohio.

4. Defendant, Robert Peques, is the Superintendent of Schools in the Warren City School District, and is responsible for overseeing the instructional, administrative and financial activities of the Warren City Public Schools.

5. At times relevant hereto, James Culver and Constance Goldberg were members of, and, along with defendants, Henry J. Angelo, Catherine O. Swan and Barbara A. Miller, constituted the Warren City School District Board of Education.

6. Each defendant is sued individually and in his or her official capacity. Relief is sought against each and all defendants as well as its or their agents, assistants, successors, employees, and all persons who acted or are acting in concert and cooperation with them at their direction.

7. Plaintiff, Dr. Ethel D. Migra, has been employed by the Warren City School District as Supervisor of Elementary Education on a yearly basis pursuant to written contracts for the school years commencing on August 13, 1976, and continuing uninterruptedly for each year thereafter until and to June 15, 1979.

8. As Supervisor of Elementary Education for the Warren City School District, plaintiff had become the Director and Administrative Consultant to a Commission appointed by the defendant-board to devise a voluntary plan for the desegregation of the elementary schools of the Warren City School District pursuant to Title VII of Public Law 92-318, and, as amended in 1974, Public Law 93-380, commonly known as the "Emergency School Aid Act."

9. By virtue of the position of Supervisor of Elementary Education, plaintiff headed a Committee of teachers charged with the responsibility of preparing and formulating a Social Studies Curriculum for the elementary schools of the Warren City School District.

10. Plaintiff's duties and responsibilities as the Director of Title VII and those in connection with the formulation of a social studies curriculum, as aforestated, were pursued at all times in conjunction with the Commission or the Committee, and in consultation with and the approval of the Superintendent of Schools for the Warren City School District.

11. The desegregation of the elementary schools in the Warren City School District on a voluntary basis had been discussed and was under consideration by the Warren City School Board of Education prior to and at the

time that the plaintiff accepted and entered into the position of Supervisor of Elementary Education for the Warren City School District.

12. The desegregation of the subject schools was required in order that the Warren City School District could qualify for and continue to receive federal funds from the Department of Health, Education and Welfare of the United States under Title VII. A plan, therefore, had been prepared and was submitted to and adopted by the said board whereby the board directed that the integration of the elementary schools would begin with the 1977-78 school year.

13. A social studies curriculum was prepared by the plaintiff and the aforementioned committee and presented to various public meetings for discussion, and ultimately, was submitted to the defendant-board for approval.

14. The plaintiff had actively and publicly participated in the resolution of the highly controversial policy matters of desegregation and the social studies curriculum as required by reason of her position as Supervisor of Elementary Education.

15. The individual defendants vigorously and vehemently objected to, intensely rejected and actively opposed the Committee's social studies curriculum proposal for the elementary schools of Warren, Ohio, and clandestinely fought and resisted the Commission's plan to voluntarily desegregate the elementary schools of the subject city. The defendants thereby developed a fierce hostility to and manifested ill-will and hatred toward the plaintiff. As a consequence thereof, they determined to non-renew the plaintiff's contract of employment.

16. Throughout the period of the deliberations by the Committee on social studies, and by the Commission to devise a plan for desegregation, the defendants deliberately disseminated and circulated malicious rumors among the board members and others in the community about the private life and activities of the plaintiff, which they knew or should have known to be false, scandalous and misleading. These actions were taken by the defendants pursuant to a pre-conceived plan to eliminate the plaintiff as the Supervisor of Elementary Education for the Warren City School District.

17. The defendant-board of education, at a regularly scheduled meeting on April 17, 1979, and according to established practice, unanimously approved and renewed the plaintiff's employment contract for the 1979-80 school year as Supervisor of Elementary Education for the Warren City School District. The contract of employment was to run from August 13, 1979 to June 15, 1980 at a salary of $26,010.00, plus automatic increments thereto as provided by the relevant regulations of the School Board.

18. In response to the defendant-board's renewal of plaintiff's contract of employment for the 1979-80 school year, as contained in the board's resolution of April 17, 1979, the plaintiff prepared a letter of acceptance and gave it to Constance Goldberg, a member of the Warren City School District Board of Education, on the night of April 23, 1979, with the instruction that she, Constance Goldberg, deliver the said letter to the Superintendent of Warren School District, Anthony Berarducci, the following morning forthwith.

19. Thereafter, a special meeting of the defendant-board was called for and held at or about 7:00 a.m. on April 24, 1979, for the ostensible and express purpose of considering the matter of Administrator, Dan Cokrlic. This meeting was called and held in violation of Section 3313.16, Revised Code of Ohio, and contrary to the Ohio Revised Code, Section 122.22, commonly known as the "Sunshine Law."

20. The plaintiff's letter of acceptance of the renewal of the contract of employment for the school year 1979-80 was delivered by Constance Goldberg to Floyd Frederick, Clerk-Treasurer of the defendant school board on the morning of April 24, 1979, and, in turn, was given to Mr. Berarducci. This letter of acceptance was given to Henry J. Angelo, the president of the Board of Education, by Mr. Berarducci, on the same morning of April 24, 1979 and was accepted and read by Henry J. Angelo, before the special meeting of the board had convened on that date.

21. At the special meeting of April 24, 1979, of the defendant-board, a motion was made and seconded to nonrenew and to rescind the plaintiff's employment contract for the school year 1979-80. The defendants, Henry J. Angelo, Catherine O. Swan, and Barbara A. Miller, voted in favor of the motion to nonrenew plaintiff's contract. Constance Goldberg opposed the motion and the remaining member of the board, James Culver, was not present. The matter of the non-renewal and the rescission of plaintiff's contract of employment, which had been voted upon and approved unanimously by the defendant-board at its meeting of April 17, 1979, was disposed of summarily and in a furtive manner.

22. Plaintiff avers that had she been given a fair and impartial hearing in accordance with the basic and elemental due process, she could have demonstrated with substantial and credible evidence that the failure to renew her contract for the school year 1979-80, and thereafter, was solely due to the expression of her views and policies with reference to the desegregation of the Warren City Schools, and in respect to the Social Studies Curriculum which was prepared and submitted to the defendant-board for approval, and that the non-renewal of the contract by the defendants was arbitrary, capricious, and unlawful, and was in no manner whatsoever related to her ability or the performance of her duties as Supervisor of Elementary Education for the Warren School District.

23. Plaintiff's credentials in the field of education and her performance as the Supervisor of Elementary Education for the schools in the Warren City School District have been in all ways exemplary, and no real question existed then nor exists now as to her ability to function within the actual and realistic structural needs of the Warren City School District.

24. As a direct result of the concerted and pre-conceived actions of the defendants, alleged above, a stigma has been imposed upon the plaintiff which caused her removal from the position of Supervisor of Elementary Education for the Warren School District, thereby depriving her of the liberty interest in her reputation and her property interest in the continued employment with the Warren City School District in violation of the rights secured to her by the Constitution of the United States.

25. The actions and conduct of the defendants in doing the things hereinabove related, caused plaintiff to

suffer extreme humiliation and embarrassment, severe mental anxiety and distress, as well as a severe nervous disorder of her entire body following the loss of employment and injury to her good name, reputation, and standing in the community. She was compelled to seek employment elsewhere and to uproot and move herself and a daughter to a distant city in order to obtain employment and had to expend much money for the services of legal counsel, and otherwise, to protect and to defend against the violations of her rights. As a direct result of the foregoing, plaintiff is suffering and will continue to suffer for the rest of her lifetime from mental distress, humiliation, embarrassment and defamation of her character and reputation, which will, in part, cause her future loss of earnings and restrict her opportunities to hold respected and trusted positions in her profession and community.

26. The actions and conduct of the individual defendants, jointly and severally, were wanton, malicious, and taken in reckless disregard of the rights of the plaintiff as hereinabove related.

27. The defendants' actions taken jointly and/or severally, including but not limited to the non-renewal of plaintiff's contract for the 1979-80 school year and thereafter, violated the First Amendment to the United States Constitution in that the actions were intended to and did in fact punish the plaintiff for the exercise of her freedom of speech, association, inquiry and academic freedom.

28. The defendants' actions, taken jointly and/or severally, violated the Fifth and Fourteenth Amendments to the Constitution of the United States in that by acting as described more fully above, they have deprived

the plaintiff of property without due process and equal protection. More specifically, the decision not to renew her contract:

(a) Was arbitrary and capricious in that it was based on unlawful and irrelevant criteria, and

(b) Was made without affording her notice and a hearing conducted in accordance with generally accepted principles of elemental fairness and due process.

29. The defendant-board breached its contract with the plaintiff for the 1979-80 school year, and arbitrarily refused to rehire her for the 1980-81 school year, and, as a consequence of its actions and conduct, plaintiff has been without employment for the school year 1979-80, and was compelled thereafter to accept employment and to relocate in another state, for which she has been damaged in the amount of $100,000.00.

30. Until the occurrence of the events as related herein, plaintiff had been employed as the Director of Summer School for the Warren City School District which was funded by Title VII. As a result of the defendant-board's action in terminating her as Supervisor of Elementary Education, plaintiff has not been employed as Director of Summer School for the period of June 18, 1979 through August 1, 1979, and a like period for the summer of 1980, thereby losing the income therefrom in the amount of $2980.00.

WHEREFORE, the plaintiff respectfully prays this Court to:

(a) permanently enjoin and restrain the defendants, their agents, assistants, successors, employees,

attorneys, and all persons acting in concert or cooperation with them or at their direction from further violating the rights, privileges and immunities guaranteed to the plaintiff under the Constitution of the United States of America;

(b) grant compensatory damages to the plaintiff in the sum of $250,000.00;

(c) grant punitive damages to plaintiff in the sum of $250,000.00;

(d) grant plaintiff reasonable attorney fees for the prosecution of this action, and her costs herein;

(e) grant such other relief that this court may deem just and proper.

/s/ JOHN R. VINTILLA
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FRANCIS X. COOK
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Tel. No. 323-3382

ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Plaintiff demands trial by jury of this action.

/s/ JOHN R. VINTILLA
ATTORNEY FOR PLAINTIFF

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO—
EASTERN DIVISION

CASE NO. C 80-1183-Y
JUDGE JOHN M. MANOS

DR. ETHEL D. MIGRA,

Plaintiff,

vs.

THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Defendants.

ANSWER

(Filed August 13, 1980)

Now comes Defendant, THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, by and through counsel, who for its separate Answer to the Complaint of Plaintiff:

FIRST DEFENSE

1. Denies the allegations contained in paragraph one (1) for lack of knowledge as to their truth or falsity.

2. Admits the allegations contained in paragraph two (2), except that Mary Milheim, Willard Rubin and Raymond Tesner did not become members of the Warren City Board of Education until January, 1980, and they were therefore not members of Defendant Board of Education at all times material hereto.

3. Denies the allegations contained in paragraph three (3).

4. Admits the allegations contained in paragraph four (4).

5. Admits the allegations contained in paragraph five (5).

6. Denies the allegations contained in paragraph six (6) for lack of knowledge as to their truth or falsity.

7. Admits the allegations contained in paragraph seven (7) and nine (9).

8. Denies the allegations contained in paragraph eight (8).

9. Denies the allegations contained in paragraphs ten (10) and eleven (11).

10. Denies the allegations contained in paragraphs thirteen (13) and fourteen (14) for the purpose of requiring strict proof thereof.

11. Denies the allegations contained in paragraph twelve (12).

12. Admits that some members of the Board of Education were dissatisfied with the Committee's social studies curriculum proposal, but denies the remaining allegations contained in paragraph fifteen (15).

13. Denies the allegations contained in paragraph sixteen (16).

14. Admits the allegations contained in paragraph seventeen (17), but states that said action was taken solely because Plaintiff had promised to resign, and because the Board wished to give Plaintiff the opportunity to resign rather than have her contract not renewed.

15. Admits that Plaintiff delivered a letter to Constance Goldberg, but denies the remaining allegations contained in paragraph eighteen (18), and specifically denies that such letter constituted an acceptance of a contract of employment.

16. Admits that a special meeting of the Board of Education was called for and held on April 24, 1979, but denies the remaining allegations contained in paragraph nineteen (19).

17. Denies the allegations contained in paragraph twenty (20) for the purpose of requiring strict proof thereof.

18. Admits that the Board of Education at the special meeting of April 24, 1979, voted to non-renew Plaintiff's contract but denies the remaining allegations contained in paragraph twenty-one (21).

19. Denies the allegations contained in paragraphs twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30).

SECOND DEFENSE

1. By ay of Defense, this Defendant states that Plaintiff's Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

2. By way of Defense, this Defendant states that Plaintiff's claims are barred by the doctrine of Res Judicata.

FOURTH DEFENSE

3. By way of Defense, this Defendant states that Plaintiff's claims are barred by the doctrine of collateral estoppel.

WHEREFORE, this answering Defendant prays that Plaintiff's Complaint be dismissed at Plaintiff's costs.

HENDERSON, COVINGTON, STEIN, DONCHESS & MESSENGER

By: _____
James L. Messenger

By: _____
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Warren City
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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION

Case No. C80-1183-Y
Judge John M. Manos

DR. ETHEL D. MIGRA,

Plaintiff,

vs.

THE WARREN CITY SCHOOL DISTRICT
BOARD OF EDUCATION, et al.,

Defendants.

ANSWER OF DEFENDANTS CATHERINE O. SWAN, HENRY J. ANGELO, WILLARD T. REUBEN, RAYMOND TESNER, MARY MILHEIM AND BARBARA MILLER TO THE COMPLAINT

(Filed August 14, 1980)

1. Defendants admit the allegations of paragraph 1 of the Complaint that this action is brought to redress alleged violations of the First, Fifth and Fourteenth Amendments to the United States Constitution in Sections 1983 and 1985 of Title 42 of the United States Code. Defendants specifically deny any violation of law and deny each and every other allegation of paragraph 1 of the Complaint.

2. Defendants admit that Catherine O. Swan, Henry J. Angelo and Barbara Miller were duly elected, qualified and acting members of the board of education of The Warren City School District at the times referred to in the Complaint but specifically deny that defendants Willard T. Reuben, Raymond Tesner and Mary Milheim were either elected, qualified or acting board members at the times referred to therein. Defendants admit, generally, that the board of education is charged with those duties

and responsibilities imposed by Ohio and Federal law but deny each and every other allegation of paragraph 2 of the Complaint.

3. Defendants deny the allegations of paragraph 3 of the Complaint except as to those actions taken by them as duly elected, qualified and acting board members in the course of meetings of the Warren City School District Board of Education.

4. Defendants admit the allegations of paragraph 4 of the Complaint and further assert that Robert Pegues did not commence his employment until January, 1980 and was not serving the Warren City School District Board of Education in any capacity during the times referred to in the Complaint prior to January, 1980.

5. Defendants admit the allegations of paragraphs 5, 6, 7, 9, 13 and 20 of the Complaint.

6. Defendants deny the allegations of paragraph 8 of the Complaint and assert that plaintiff, together with other administrators in the Warren City School District was designated to serve as a resource person to a commission appointed by the board of education to devise a voluntary plan for the desegregation of the school district.

7. Defendants assert that they are without sufficient knowledge to form a belief as to the truth of the allegations of paragraphs 10 and 11 of the Complaint.

8. Defendants admit the allegations of paragraph 12 of the Complaint that the board of education adopted and implemented a voluntary plan for the desegregation of the Warren City Schools and assert that the plan was adopted

in December, 1977. Defendants deny each and every other allegation of paragraph 12 of the Complaint.

9. Defendants admit the allegations of paragraph 14 of the Complaint that plaintiff was active in the development of a social studies curriculum plan but assert that they are without sufficient knowledge to form a belief as to the truth of each and every allegation of paragraph 14.

10. Defendant Catherine O. Swan admits the allegation of paragraph 15 of the Complaint that she opposed the social studies curriculum proposal but denies each and every other allegation of paragraph 15 of the Complaint. Defendant Mary Milheim, admits that she opposed, as a citizen and not as a member of the board of education, the social studies curriculum proposal but denies each and every other allegation of paragraph 15 of the Complaint. Defendants deny each and every other allegation of paragraph 15 of the Complaint.

11. Defendants deny the allegations of paragraphs 16, 22, 23, 24, 25, 26, 27, 28 and 29 of the Complaint.

12. Defendants admit the allegations of paragraph 17 of the Complaint that the board of education approved the employment of plaintiff under an additional one year limited contract of employment for the 1979-1980 school year but deny that any such contract was ever executed between the board and plaintiff. Defendants Angelo, Swan and Miller further assert that their vote in favor of a further contract of employment for plaintiff was made with the understanding and belief that the plaintiff would resign. Defendants deny each and every other allegation of paragraph 17 of the Complaint.

13. Defendants admit the allegations of paragraph 18 of the Complaint that plaintiff prepared a letter purporting to accept the action of the board of education authorizing a further contract of employment for her but assert that no such written contract had ever been tendered or accepted. Defendants deny each and every other allegation of paragraph 18 of the Complaint.

14. Defendants admit the allegations of paragraph 19 of the Complaint that the action of the board of education authorizing a further limited contract of employment for the 1979-1980 school year was rescinded by the board of education on or about April 24, 1979. Defendants deny each and every other allegation of paragraph 19 of the Complaint.

15. Defendants admit the attendance, motion and vote of the members of the board of education as referred to in the allegations of paragraph 21 of the Complaint but deny each and every other allegation of paragraph 21.

16. Defendants admit the allegations of paragraph 30 of the Complaint that plaintiff had been employed as director of summer school for the Warren City School District and further assert that plaintiff's employment in that capacity was under a supplemental contract of employment which was nonrenewed in April of 1979. Defendants deny each and every other allegation of paragraph 30 of the Complaint.

17. Defendants deny each and every other allegation of the Complaint not specifically admitted herein.

First Defense

18. The complaint fails to state a claim upon which relief may be granted.

Second Defense

19. Defendants Reuben, Tesner and Milheim were not members of the Warren City School District Board of Education until January, 1980, and took no part in the acts complained of in the complaint. The complaint fails to state a claim upon which relief may be granted as to them.

Third Defense

20. Each of these answering defendants has acted in good faith and without malice and is, therefore, immune from liability in this action.

Fourth Defense

21. The claims set forth in the complaint are barred by the doctrine of res judicata or by the doctrine of collateral estoppel because they either were raised or could have been raised in a similar action between Plaintiff and Defendants Board of Education of the Warren City Schools, Catherine O. Swan, Henry Angelo and Barbara Miller which action is now pending before the Court of Appeals of Trumbull County, Case No. 79 CV 591.

Fifth Defense

22. Those portions of the complaint which purport to assert a right to recovery based on defamation or intentional tortious injury are barred by the statute of limitations.

/s/ Robert T. Baker

/s/ Nicholas A. Pittner
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42 East Gay Street
Columbus, Ohio 43215
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Counsel for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C80-1183-Y

Judge John M. Manos

DR. ETHEL D. MIGRA,

Plaintiff,

vs.

WARREN CITY SCHOOL DISTRICT, BOARD OF EDUCATION, et al.,

Defendants.

MOTION OF INDIVIDUAL DEFENDANTS REUBEN, TESNER AND MILHEIM FOR SUMMARY JUDGMENT

(Filed September 10, 1980)

Now come Willard T. Reuben, Raymond Tessner and Mary Milheim and move the court under the provisions of Rule 56, Federal Rules of Civil Procedure, for summary judgment in their favor.

/s/ Nicholas A. Pittner

/s/ Michael J. Loughman
Means, Bichimer, Burkholder
& Baker Co., L. P. A.
42 East Gay Street
Columbus, Ohio 43215
(614) 221-3135
Counsel for Defendants
Reuben, Tesner and Milheim

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C80-1183-Y
Judge John M. Manos

DR. ETHEL D. MIGRA,

Plaintiffs,

vs.

THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Defendants.

MOTION OF DEFENDANTS CATHERINE O. SWAN, HENRY J. ANGELO, WILLARD T. REUBEN, RAYMOND TESNER, MARY MILHEIM AND BARBARA MILLER FOR SUMMARY JUDGMENT

(Filed September 26, 1980)

Now comes Catherine O. Swan, Henry J. Angelo, Willard T. Reuben, Raymond Tesner, Mary Milheim and Barbara Miller and move the court under the provisions of Rule 56, Federal Rules of Civil Procedure, for summary judgment in their favor.

/s/ Nicholas A. Pittner

/s/ Michael J. Loughman
Means, Bichimer, Burkholder
& Baker Co., L. P. A.
42 East Gay Street
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(614) 221-3135
Counsel for Defendants Swan, Angelo, Reuben, Tesner, Milheim and Miller

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C80-1183-Y

Judge John M. Manos

DR. ETHEL D. MIGRA,

Plaintiff,

vs.

THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Defendants.

MOTION

(Filed October 3, 1980)

Now comes Defendant, THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, by and through counsel, and moves the Court under the provisions of Rule 56, Federal Rules of Civil Procedure, for summary judgment in its favor.

Henderson, Covington, Stein, Donchess & Messenger

By: James L. Messenger

By: Christopher J. Newman
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Telephone: (216) 744-1148
Attorneys for Defendant, Warren City School District Board of Education

MEMORANDUM IN SUPPORT OF MOTION

This Motion for summary judgment is submitted to the Court under the authority of Rule 56, Federal Rules of Civil Procedure. The basis of this Motion for summary judgment is that the claims of Plaintiff asserted in her Complaint are barred by the doctrine of Res Judicata and the one year statute of limitations for defamation under Ohio Revised Code Section 2305.11.

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

Case No. 79-CV-571

DR. ETHEL D. MIGRA,
2637 Woodland NE, Warren, Ohio 44483,

Plaintiff,

vs.

THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, Warren, Ohio 44482 and HENRY J. ANGELO, 195 Oak Knoll Street NE, Warren, Ohio 44483 and CATHERINE O. SWAN, 349 Porter Street NE, Warren Ohio 44483 and BARBARA A. MILLER, 745 Oak Knoll Street NE, Warren, Ohio 44483,

Defendants.

COMPLAINT

(Filed June 7, 1979)

Count I.

1. Plaintiff, Dr. Ethel D. Migra, has been employed by the Warren City School District as supervisor of elementary education pursuant to written contracts, for the school years August 13, 1976 to June 15, 1977, August 13, 1977 to June 15, 1978 and August 13, 1978 to June 15, 1979.

2. On April 17, 1979, the defendant, Warren City School District Board of Education, at a regularly scheduled meeting, upon recommendation of the superintendent, formally renewed plaintiff's employment contract with the Warren City School District at the stated salary of $24,700.00 for the contract year August 13, 1979 to June

15, 1980. Said renewal was by an unanimous vote of the entire Board of Education.

3. On April 18, 1979, plaintiff accepted the renewal of her contract for the school year August 13, 1979 through June 15, 1980 by tendering written notice of acceptance to a member of the Warren City School District Board of Education.

4. On April 24, 1979 at approximately 7:00 a.m., the Warren City School District Board of Education held an alleged "Special Meeting" of the Board for the purpose "discussing any matters that may come before the Board".

5. At the aforementioned "Special Meeting" of April 24, 1979, Board Members Henry J. Angelo, Catherine O. Swan and Barbara A. Miller, via a series of procedural irregularities, purportedly passed a resolution deleting plaintiff's name from the list of those administrative staff employees whose 1979-1980 school contracts were renewed at the regular April 17, 1979 (aforementioned) meeting of the Warren City School District Board of Education.

6. Plaintiff states that the action of the defendant School Board in canceling her 1979-1980 school contract was illegal under the laws of the State of Ohio and that despite formal demand the Board has refused to acknowledge Dr. Migra's contract.

7. Plaintiff states that her salary for the 1979-1980 school contract year is $24,700.00 and that the Board's action, if allowed to stand, will damage her in that amount.

Count II.

8. Plaintiff realleges paragraphs 1 through 7 as if fully rewritten herein.

9. Plaintiff states that because of the "cancellation" of her 1979-1980 contract as Supervisor of Elementary Education, she has not been employed as Director of Summer School for the Warren City School District for the period June 18, 1979 through August 1, 1979.

10. Plaintiff states that her salary as Director of Summer School, funded by Title VII, is $1,490.00 and the Board's action has damaged her in that amount.

Count III.

11. Plaintiff realleges paragraphs 1 through 10 as if fully rewritten herein.

12. Plaintiff states that the defendant Board anticipatorily breached its contract with the plaintiff for the 1979-1980 school year on April 24, 1979 when it publicly renounced same.

13. Plaintiff was damaged in the amount of $24,-700.00 as the result of such breach by the defendant School Board.

Count IV.

14. Plaintiff realleges paragraphs 1 through 13 as if fully rewritten herein.

15. Plaintiff says that between April 17, 1979 and April 24, 1979 defendants Henry J. Angelo, Catherine O. Swan and Barbara A. Miller did by unlawful meetings wherein the public business was conducted willfully and maliciously conspire to deprive the plaintiff of her contract rights with the Warren City School District.

16. Plaintiff states that the action by defendants Angelo, Swan and Miller has caused her to be damaged in the amount of $26,190.00.

Count V.

17. Plaintiff realleges paragraphs 1 through 16 as if fully rewritten herein.

18. Plaintiff says that between April 17, 1979 and April 24, 1979, Henry J. Angelo, Catherine O. Swan, and Barbara A. Miller did by unlawful meetings conducted outside the scope of their authority as members of the Warren City School District Board of Education conspire to deprive the plaintiff of her contract rights with the Warren City School District.

19. Plaintiff states that the action by defendants Angelo, Swan and Miller has caused her to be damaged in the amount of $26,190.00.

WHEREFORE, for the aforementioned reasons, plaintiff demands:

1. that her 1979-1980 contract of employment with the Warren City School District be declared valid or defendants found to have breached same.

2. that she be awarded $1,490.00 as damages from the defendant Board for loss of her Summer School Contract.

3. that plaintiff be awarded $24,700.00 compensatory damages and $25,000.00 in punitive damages from the defendants.

4. such other relief as the court deems just.

/s/ James M. Caulfield
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IN THE COURT OF COMMON PLEAS,
TRUMBULL COUNTY, OHIO

Case No. 79-CV-571

DR. ETHEL D. MIGRA,

Plaintiff,

vs.

WARREN CITY SCHOOL DISTRICT
BOARD OF EDUCATION, et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed March 20, 1980)

Findings of Fact

1. The defendant board in its resolution of April 17, 1979, approved the renewal of a limited contract with the plaintiff for the 1979-80 school year as Supervisor of Elementary Education for the Warren City School District. The contract period was to run from August 13, 1979 to June 15, 1980. (See Joint Exhibit A; p. 65 of Dr. Migra transcript).

2. The plaintiff wrote a letter of acceptance on th 23rd of April, 1979, in response to the defendant board's renewal contained in its resolution of April 17, 1979, which letter of acceptance was dated April 18, 1979, by her. The plaintiff submitted this acceptance letter to board member Constance Goldberg on the night of April 23, 1979, and requested that she deliver this letter to Superintendent Anthony Berarducci the next morning. (See Joint Exhibit F; pp. 12 and 13 of Dr. Migra transcript.)

3. Joint Exhibit F, the plaintiff's letter of acceptance, was delivered by Constance Goldberg on the morn-

ing of April 24, 1979, to Superintendent Berarducci's office to his secretary who gave it to Mr. Berarducci who in turn submitted it to board president Henry Angelo who accepted and read it before the special board meeting of April 24, 1979, began and before any nonrenewal action or recission was attempted. (See pp. 29 and 34 of Berarducci deposition; see testimony of Henry Angelo as for cross-examination in connection with Joint Exhibit F.)

4. The special board meeting of April 24 was called by board president Henry Angelo. (See testimony of Henry Angelo, Floyd Fredericks, pp. 20-23 of Berarducci deposition.)

5. Board president Henry Angelo did not sign the required notice for this meeting. (Joint Exhibit B; testimony of Henry Angelo and Floyd Fredericks.)

6. Board member James Culver did not receive his written notice of the special board meeting of April 24, 1979, until his return from the National School Boards Convention in Miami, Florida, on the 25th of April, 1979; Mr. Culver did receive a phone call from Carol Hall, Mr. Berarducci's secretary on April 19, 1979, before he left for Florida, but her message to him was that the special meeting on the 24th of April would only involve the matter of the administrator; Dan Cokrlic's name to be taken off administrator's list. (See testimony of Mr. Culver and Carol Hall.)

7. The plaintiff did not receive a written contract document from the board for the 1979-80 school year nor did she or the board execute such a document.

8. Four members of the board were present at the session held on April 24, 1979, at or about 7:45 a.m. with

Mr. Culver being the only absentee. After disposing of Mr. Cokrlic's matter, the subject of plaintiff's status was brought up under "new business." A motion was made and seconded to nonrenew plaintiff for the school year 1979-80. A vote of 3 to 1 was recorded in favor of this motion. (See testimony of Barbara Miller.)

9. The plaintiff received a written notice of nonrenewal from the board on April 27, 1979, through Floyd Frederick, which was personally delivered by him to her at her office. (See Joint Exhibit H; p. 47 of Dr. Migra transcript; testimony of Floyd Frederick.)

10. The status with regard to plaintiff's involvement as a Title VII Director for the summer of 1979 was never finalized. This was not an inherent part of her basic limited contract status, but was to be a supplemental contract. It was never issued. (See Dr. Migra transcript pp. 23, 70-71; p. 37 of Berarducci deposition; Henry Angelo testimony.)

11. The plaintiff started to receive unemployment benefits at the rate of $120.00 on a consecutive weekly basis the week of Aug. 25 (26), 1979, which continued through the date of hearing. (p. 47 of Dr. Migra transcript.)

12. Plaintiff's efforts to mitigate have been reasonable. (pp. 72-74 and 84 of Dr. Migra transcript.)

13. Board members Angelo, Swan, and Miller did not engage in open discussion regarding Plaintiff's status for the school year 1979-80 in the executive session or the board meeting of April 17, 1979. There were separate contacts, however, on this topic as between board president Henry Angelo and Mrs. Swan, and Mr. Angelo

and Mrs. Miller, prior to April 17 and after April 17 up to April 24. The Court finds that during these time frames there was never a time when these three met simultaneously so as to constitute a majority in any prearranged manner to discuss this subject of public business.

14. There is nothing in the evidence to show that the press or news media was notified of the purpose of the special meeting of the 24th of April as it applied to plaintiff. Floyd Frederick's testimony regarding his phone calls to news media on April 20 is that he testified that to the best of his knowledge he did not tell them that anything about Plaintiff was to be on the agenda, and he further testified that he put nothing in the notice posted regarding the meeting of the 24th on the bulletin board of the board's office about plaintiff's contract status to be included in the agenda expressly.

15. The defendant board conducted no action under or pursuant to Ohio Revised Code Section 3319.16 to discharge the plaintiff.

Conclusions of Law

1. Ohio Revised Code Section 3319.08, as amended and effective 8/22/73 provides as follows in the first sentence of the first paragraph:

> The Board of Education of each city . . . school district shall enter into written contracts for the employment and re-employment of all teachers.

The second paragraph of this code section contains the following:

> If a board of education adopts a motion or resolution to employ a teacher under a limited or con-

tinuing contract and the teacher accepts such employment, the failure of such parties to execute a written contract shall not avoid such employment contract.

The Court finds that this section prescribes the form and substance of teaching contracts in the State of Ohio.

a. Administrative supervisors are included within the definition of "teachers" for this purpose. (See Ohio Revised Code Section 3319.09.)

b. The earlier enactments of Ohio Revised Code Section 3319.08, prior to the amendment of this section on 9/18/61, did not use the term "written" in reference to such contracts, nor did they include the language cited above as the present second paragraph of this section that the failure to execute a written contract shall not void such employment contract. These provisions were inserted in this code section for the first time in the 1961 amendment thereto.

c. The Court finds that these foregoing amendments to 3319.08 were adopted after the decision in *Riegal vs. Holmes,* 14 OO 2d 299, which held in effect that under the Ohio Teachers Tenure Act all teaching contracts of boards of education with teachers holding at least a provisional or temporary certificate must be in writing. This case was decided December 31, 1960. Therefore, the Court finds that this case is not controlling or precedent with respect to the case at hand.

d. The Court also finds that the language "written" and "The failure of the parties to execute a written contract shall not void the automatic re-employment of such teacher" was inserted in Ohio Revised Code Section 3319.11 by way of the amendment of 9/8/61 also.

e. Thus, the Court concludes the above analysis clearly demonstrates the legislative intent that a valid contract status between a board of education and a teacher does not require such contract to be in writing or to be executed in order to be binding if other basic contract requirements and obligations are achieved and further, that "writing" and "execution" requirements are at best ministerial. (See *Jacot, Appellee v. Secrest et al., Board of Education of City of Warren, Appellants,* 153 Ohio St. 553 (1950).)

2. The Court finds that the relationship between a teacher and a board of education is contractual and one that is protected against impairment by any state law by Article I Section 10 of the United States Constitution and by the due process clause of the Fourteenth Amendment, subject to the qualification that pertinent state statutes in effect at the time a contract is formed are to be read into it. See *Ludwig v. Board of Education,* 27 OO 359 (1943) (See *Secrest* case also) and 48 O Jur. 2d "Schools" Section 115 at pp. 835-836. Thus, basic concepts of general contract law apply to such contracts subject to statutory enactment.

a. The Court finds that the elemental concepts of "offer" and "acceptance" under Ohio law are defined as follows:

> It is the general rule that an offer, to become a binding contract, must be accepted, without qualification and while the offer is still open and existing, by one having the right to accept, and the acceptance must be communicated to the offeror. Whether an offer is accepted is a question of fact. (See 17 O Jur. 3d "Contracts" section 27 at p. 459.)

b. It is also basic in the law of contracts that an offer may be revoked or withdrawn before acceptance, 17 O Jur. 3d "Contracts" section 24 at page 456; or before the intervention of any legal right. See footnotes 71 and 77 of Section 24 under "Contracts" 17 O Jur. 3d at p. 456.

c. The Court wholeheartedly concurs with the proposition of law set forth in defendant board's brief at 10 thereof citing from *State ex rel. v. The Board of Public Service of Columbus,* 81 Ohio St. 218, at pp. 224-225 to the effect that public boards have a right to reconsider their actions and rescind those contractual in nature. However, this Court finds that this proposition of law is a qualified as the Court in the *Board of Public Service* case pointed out at page 225 as follows:

> But that they are possessed of inherent power to reconsider their action in matters of that nature, and adopt if need be the opposite course *in all cases where no vested right of others has intervened* . . . (italics supplied).

Thus, this Court concludes that the law is clear that a school board's right to rescind its actions is a qualified one and is extinguished in a contractual situation where the board's offer of a limited contract under Ohio Revised Code Section 3319.08 is expressly accepted in writing prior to April 30 of a given calendar year, and prior to an effective rescission under this calendar frame.

4. The Court finds that the matter of salary or salary schedule for the succeeding school year is not an integral or required element of consideration for the formation of a valid limited teaching contract, by April 30 of a given calendar year; nor is it required under Ohio Revised Code Section 3319.08, or by June 1 under Ohio Revised Code Section 3319.11. (See O. R. C. 3319.12.)

5. The Court finds that Ohio Revised Code Section 3313.16 sets forth the procedure to be followed under Ohio Law for the termination of a teacher who has a contract with a board of education.

a. This section of the code also applies to teachers who are under contract or administrators. (See *Rumora v. Board of Education of Ashtabula*, 72 OO 2d 369 (1973).)

6. The Court finds that Ohio Revised Code Section 3313.16 mandates the procedure fo rthe calling of a special meeting by a board of education.

a. It has been held that if such requirements as to notice are not complied with, the proceedings are of no force and any action taken in such a meeting is a nullity. (See 48 O Jur. 2d "Schools" section 75 at p. 772.)

7. The meetings of boards of education are subject to the proscriptions of Ohio Revised Code Section 121.22, more commonly referred to as the "Sunshine Law".

a. Ohio Revised Code Section 121.22(B)(2) provides as follows

> (B)(2) (as used in this section: "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

b. Violation of this section in this context would appear to generally require a simultaneous discussion of public business by a majority of the board's members. In this case that would require a simultaneous discussion of public business involving three or more members, and any contact short of that "is insufficient to render invalid the official action of the public body", and thus does not violate Ohio Revised Code Section 121.22(H). See *Hamilton*

Classroom Teachers Association, et al. v. Hamilton City School District, No. CV 78-09-0839 (1979).

8. The measure of damages in a situation where a teacher is wrongfully discharged is the difference between the contract rate or total for the employment period, and the amount of other earnings or income the discharged employee is able to earn in mitigation. See 16 O Jur. 2d "Damages sections 22 and 210 therein. Also See *The Bowling Green Township School District of Licking County v. Preston E. Breese,* 15 CCP-NS p. 497 (1912), particularly syllabus No. 2.

9. Generally, employers that are considered non-profit organizations, as are school boards, and that participate in the state unemployment fund under the reimbursing account method (O. R. C. section 4141.241), are generally entitled to credit for amounts that a wrongfully discharged employee receives from unemployment benefits as against the total amount of employment contract liability as is found to exist at the time such employee is reinstated so long as the employer has made proper notice to the Ohio Bureau of Unemployment Compensation. (See O. R. C. Sections 4141.28(G)(4) and 4141.30(C).)

/s/ Donald R. Ford

The Honorable Donald R. Ford

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
Case No. 79-CV-571
DR. ETHEL D. MIGRA,
Plaintiff,
vs.
WARREN CITY SCHOOL DISTRICT
BOARD OF EDUCATION, et al.,
Defendants.

OPINION
(Filed March 20, 1980)

This matter came before the Court for trial on the issues joined for declaratory and injunctive relief. The issue of conspiracy was reserved and continued. Thus, the question of individual board member liability is not involved in this opinion.

Statement of Issues

The primary issue presented under the issues joined in this case is whether or not a board of education can legally rescind its action by way of a resolution adopted on April 17, 1979, at a regular board meeting pursuant to Ohio Revised Code Section 3319.08, in which it offered or extended a limited contract for the ensuing school year to a teacher-administrator when the teacher-administrator expressly accepts such offer in writing on April 24, 1979, before the board meets at a special meeting to adopt a resolution to rescind or nonrenew the offer of a limited contract to such teacher-administrator when such action of rescission or nonrenewal occurs before a written contract is prepared and executed by the board and the teacher-administrator?

Other issues related to the foregoing question are:

1. Was the function of Director of the Summer Program under Title VII for the summer of 1979 a substantial element and part of the consideration of the limited contract extended to the plaintiff on April 17, 1979?

2. Did the board properly comply with the requirements of Ohio Revised Code Section 3313.16 by making a proper call and causing effective legal notice of the special meeting scheduled for April 24, 1979, to issue as it relates to the nonrenewal or rescission of plaintiff's limited contract for the 1979-80 school year.

3. Did the contacts and discussions that three of the members of board had, namely Henry Angelo, Barbara Miller, and Catherine Swan, outside of a regular or special meeting or executive session thereof, during the month of April 1979, prior to the special meeting of April 24, 1979, about the renewal or nonrenewal of plaintiff's limited contract for the school year 1979-80 constitute a "prearranged discussion of the public business of the public body by a majority of its members", or a "meeting" (O.R.C. section 121.22(B)(2), and thus violate Ohio Revised Code Section 121.22(H), the Ohio "Sunshine Law"?

4. What compensatory damages, if any, did the plaintiff legally suffer; and if so, what is the measure of such damages?

5. If the plaintiff is entitled to compensatory damages, what duties to mitigate such damages are imposed on the plaintiff, and what tests are to be applied to mitigation requirements, if any?

Conclusion

The basic mechanics of effectuating a contract between a board of education and a teacher-administrator are essentially set forth in Ohio Revised Code Section 3319.08. It is this Court's opinion that this section clearly does not require the creation of a written contract document and its execution or signing as between a board of education and a teacher before the status of a binding legal contract can come into being under the prescriptions of this section, or the general principles of contract law which are not inconsistent with the terms of this section, and which would be applicable. An examination of the legislative history of this section of the revised code and its predecessors clearly indicates to this Court that the holding in *Riegal v. Holmes,* 14 OO 2d 299, which held in effect that under the Ohio Teachers Tenure Act, all teaching contracts of a board of education with teachers holding at least a provisional or temporary certificate must be in writing is no longer operative, controlling, or any form of precedent under this section. The *Riegal* case was decided on December 31, 1960. This particular section was amended effective September 18, 1961, subsequent to the *Riegal* case and for the first time in the first sentence of the first paragraph of this section appeared the word "written" in relationship to contracts. In addition to that, also for the first time the language contained in the second paragraph was inserted which in effect was, "If the board of education adopts a motion or resolution to employ a teacher under a limited or continuing contract and a teacher accepts such employment, the failure of such parties to execute a written contract shall not avoid such employment contract." The same type of language was also inserted

at the same time in Ohio Revised Code Section 3319.11 and these insertions have continued in these two statutory sections in all subsequent amendments to them, to and including the last amendments effective August 22, 1973. This Court notes with interest that the Court in the *Riegal* case referred in its decision at page 308 to *Jacot v. Secrest* to buttress its position that the procedure under then existing sections of the revised code resulted in an obligation on the part of a board of education to enter into an actual written contract with a teacher, and that both would be required to sign it before a binding legal contractual status would be reached. The *Riegal* Court's position was in contradiction of "Ohio Attorney General's Opinion No. 6419" under date of April 4, 1956. It is this Court's position that the *Riegal* Court's view represented a misapplication of the logic and holding of the *Jacot v. Secrest* decision, based perhaps on the Riegal Court's zeal to immunize the teacher-defendant in that case from liability.

Interestingly, this Court is of the opinion that the holding and thrust of *Secrest* are most applicable to our present case. Admittedly, it dealt with the interpretation of the predecessor section of Ohio Revised Code Section 3319.11, which again like the predecessor of of 3319.08 contained no language reference to "written", and did not contain express diction eliminating the requirement of executing a written contract. It reached the same result as a matter of analysis of the then existing applicable statutes and general principles of existing contract law. It is this Court's view that Ohio Revised Code Sections 3319.08 and 3319.11, as well as their predecessors, may be read in pari materia so far as their comparative, express language is concerned and the interpretation of same bears

on determining the legislative intent of these sections as to whether or not there is a conditional, concomitant requirement that before a valid, binding contractual relationship between a board of education and a teacher-administrator can be achieved a written contract that is executed must exist. Applying *Secrest* and like authority, and reading the plain language of Ohio Revised Code Section 3319.08, this Court concludes that there simply is no requirement or concomitant condition under Ohio law that a written, executed contract document must exist before there may be a binding contractual relationship between a board and a teacher. Simply stated, the law of Ohio is expressly to the contrary.

Similarly, the Court finds no authority for the argument or proposition that a fixed statement of salary for the following school year is an integral element of consideration for the formation of a valid limited contract by April 20 or June 1 under Ohio Revised Code Sections 3319.08, 3319.11, or 3319.12. With respect to written contracts between school boards and teachers, and the statement of salary schedules after July 1 of a given calendar year under Ohio Revised Code Sections 3319.11 and 3319.12, this Court takes judicial notice of the realities of long standing school board practices in Ohio; that after the board doesn't know until the first part of August, or even September, of each year what the actual roster of teachers will be in a given school year because of resignations, retirements, and reassignments, or what sources of teacher funding will be available, and thus because of both statutory permission and standard practices many school board contracts with teachers are not reduced to writing until after June 1, and/or before August 15, or September 1 of a given year.

It is appropriate next to take up the question of rescission or nonrenewal. The defendant board here cites *State ex rel Owen v. Carrol County Board of Education,* 129 Ohio St. 262, and like authority for the proposition, "When nothing has been accomplished except the adoption of an original resolution by a board of education . . . such action may in good faith be reconsidered or rescinded within a reasonable time." This position is not sufficiently incisive to be dispositive here. This issue in this case is not whether a board of education can rescind a unilateral action. The primary question raised by the facts in this case is whether or not a board of education can effectively rescined a bilateral exercise in which it extended an unconditional offer by resolution under Ohio Revised Code Section 3319.08 that was followed by an express written acceptance by the plaintiff, and was delivered to the defendant board before any action of rescission or nonrenewal was taken by it.

On this point, the defendant board cites *State ex rel v. the Board of Public Service of Columbus,* 81 Ohio St. 218 at 224 in support of its position that it had the right to rescind its action of April 17, 1979, at the special meeting on April 24, 1979. The very language cited by the defendant board from this case contains the basic point of law that is dispositive of this issue on the facts of this case at page 224.

> **That rule, well settled by numerous adjudications, is to the effect that the action of such bodies respecting legislative or administrative matters is not always conclusive and beyond recall, but they are possessed of inherent power to reconsider their action in matters of that nature, and adopt if need be the opposite course *in all cases where no vested right of others has intervened.* . . . (italics supplied).**

It is basic contract law that where an offer has been clearly accepted, involving a legal subject matter and consideration, that vested rights under a contract come into being, and that an attempt to rescind by the offeror after such acceptance can have no legal consequence or effect. Thus, the Court holds that the action of the defendant board on April 24, 1979, was without legal effect.

Defendant-board's contention that *State ex rel. Hura v. Board of Education,* 5 OO 3d 10 (1977) has application here is without merit. The *Hura* case is clearly distinguishable on its facts and application of law. In the *Hura* case, Mr. Hura began work as a teacher with the Brookfield Local School District in September, 1970, under a limited contract status. He obtained his professional teaching certificate on February 24, 1974, and thus became eligible for continuing status for the 1974-75 school year. On April 29, 1974, the Brookfield board passed a resolution under Ohio Revised Code Section 3319.08 to nonrenew Mr. Hura and seven other teachers, which inferentially was communicated in a timely fashion to him by April 30 of that year, which nonrenewals were made a part of the negotiations with the Brookfield Federation of Teachers that year. On May 22, 1974, the board rescinded its action of April 29, and then extended contract offers to Mr. Hura and the other seven teachers for 1974-75, and affirmed that action on May 28, 1974. Mr. Hura later signed a limited contract for the 1974-75 school year and performed thereunder. On April 16, 1975, the local and county superintendents recommended that Mr. Hura be granted a limited contract for the 1975-76 school year, and on April 23rd, the board through its superintendent notified him of its decision. On April 25, the board received a letter from the county superintendent recommending that Mr. Hura not

be re-employed by the board for the 1975-76 school year. On April 28, the board passed a motion rescinding its previous motion and in a timely manner notified Mr. Hura of its nonrenewal. On July 2, 1975, Mr. Hura requested the Eleventh District Court of Appeals to grant a writ of mandamus directing the board to enter into a contract with him based on his claim that he was entitled to continuing service status under Ohio Revised Code Section 3319.11. The Court of Appeals granted the writ on the conclusion that "the action of the board in employing . . . Hura in May of 1974, conferred upon him continuing contract status with the respondent board".

On appeal, the Supreme Court stated succinctly that the issue before it was "whether Hura was entitled to a continuing contract for the 1974-75 or 1975-1976 school years". In holding that he was not entitled to such status, the Supreme Court stated at page 14 that:

> Hura, having taught under a one year limited contract for the 1974-1975 school year, was entitled to a continuing contract for the 1975-1976 school year if he were to be re-employed. However, the board decided, before April 30, 1975, not to re-employ Hura, and provided Hura proper notice of its action. Therefore, Hura had no right to a continuing contract for the 1975-1976 school year.

There is nothing in the *Hura* case to substantiate that Mr. Hura acted in any way to accept the board's proposal of April 23, 1975, with regard to the board's offer of a limited contract of that date (pursuant to Ohio Revised Code Sections 3319.08 and 3319.11) for the 1975-76 school year prior to its action of rescission of the offer of April 23, 1975, on April 28. Therefore, it is in this specific regard that the Hura case is clearly distinguishable on its facts

from the case at hand, as well as the primary principle of contract law involved in this case that was not before the Court in the *Hura* case, and thus it has no express application here.

With respect to plaintiff's claim that she was also entitled to contractual benefits as a Director of Summer Programming for 1979 under Title VII funding, the Court holds that the plaintiff has failed to carry the burden of proof on this issue. The state of the record on this point, particularly the testimony of Mr. Berarducci, Mr. Angelo, and the plaintiff herself clearly shows that this particular function was not an inherent part, or any aspect of the consideration of her limited contract for the 1979-80 school year. In fact, the Court concludes from the evidence that particular role was to be the subject of a separate supplemental contract, and that such supplemental contract never came into existence, nor did it ever issue. The plaintiff has no basis for recovery on this claim.

Ohio Revised Code Section 3313.16 provides the requirements for the calling of a special board meeting. It states that such a meeting may be called by the president or treasurer thereof or by any two members by serving written notice of the time and place of such meeting upon each member of the board at least two days prior to the date of such meeting. The record is clear that Mr. Angelo, the president of the board, called the special meeting of April 24, 1979, within the meaning of Ohio Revised Code Section 3313.16, which further specifically provides:

> Such notice must be signed by the official or members calling the meeting.

It is equally clear from the face of Joint Exhibit B, the notice of the special meeting, that Mr. Angelo failed

to sign it. The record is also unequivocal in manifesting that board member, James Culver, did not receive a copy of the written notice of this special meeting until after his return from the National School Board's convention in Miami, Florida, which occurred on April 25, 1979. The testimony of all witnesses on the subject of Mr. Culver's intention to attend the convention was substantially the same—that he planned to leave near the end of the week of April 15, 1979, and that by inference he would obviously not be physically in Warren on some of those days immediately preceding April 24.

Mr. Culver did testify that he did receive oral notice of this special meeting by way of a call from Carol Hall, Mr. Berarducci's secretary, on the 19th of April, but he stated that in this phone message from her she indicated to him that the special meeting of the 24th would only involve the matter of the administrator, Mr. Cokrlic. This was not contradicted by any other evidence. Thus, the requirement of prior written notice on Mr. Culver under Ohio Revised Code Section 3313.16 was not fulfilled.

The record indicates that many of the initial informal communications concerning the purpose for the special meeting made by administrative officers indicated that it was called to take up only Mr. Cokrlic's situation, although later contacts with certain board members indicated the plaintiff's status would be brought up again. The agenda for that meeting was silent on this subject, although admittedly the agenda included the standard legerdemain of "new business". *Drury's Ohio School Guide Third edition,* at section 3.62, page 67 thereof under the topic "Special Meetings" makes the following observation on this subject:

> While the statute is silent as to whether the written notice shall state the purpose of the special meeting, it would seem to be better practice if the notice indicates with clearness and particularity the business to be transacted in order that the members of the board may fairly understand the purpose for which they are to be convened. In some jurisdictions, the Courts have held such to be necessary.

Query, what is the effect of a failure to comply with the calling criteria found in the code? With respect to this question as it bears on the requirements for calling a special meeting under Ohio Revised Code Section 3313.16, 48 O Jur. 2d, under the topical subject, "Schools", section 75 under the sub-topic, Time, Calling and Place of Meetings, page 772 provides:

> It has been held that if such requirements as to notice are not complied with, the proceedings are of no force and any action taken in such a meeting is a nullity.

This Court would indicate that the foregoing conclusion is subject to certain embellishments and qualifications as a result of certain case holdings on this subject in Ohio. Enhancing technocracy is not a judicial goal of this Court; however, in view of the fact that the officer of the board who called this meeting failed to sign the required notice in a proper manner, the lack of a proper written notice being served on board member, James Culver, in a timely fashion, the general ambiguity involved in communicating the purpose of this meeting to board members, the news media, and the public at large, and the totality of circumstances surrounding the call of this special meeting, this Court finds a significant and substantial failure to comply with Ohio Revised Code Section 3313.16. Thus, respecting

this issue, the Court holds that any action taken by the defendant board at this meeting was null and void.

The plaintiff also contends that the action by the defendant board at the special meeting of April 24, 1979, was also invalid because a majority of the board members had violated certain provisions of Ohio Revised Code Section 121.22, commonly designated as the "Sunshine Law". Obviously, meetings of governmental bodies under this law are to be public, unless they fall within the parameters of one of the express exceptions of this section. There is no doubt that school boards fall within the purview of this law.

Ohio Revised Code Section 121.(B)(2) provides:

> "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

Ohio Revised Code Section 121.22(H) in part contains the following proscription:

> A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) of this section. . . .

Hence, the basic question raised under this contention is whether the contacts that obtained prior to April 17, and before April 24, between board members Henry Angelo, Catherine Swan, and Barbara Miller outside of a regularly scheduled special meeting of the board constitute a "prearranged discussion of the public business of the public body by a majority of its members", or a "meeting" that violated Ohio Revised Code Section 121.22(H).

The record reflects that board members Angelo, Swan, and Miller did not engage in open discussion regarding plaintiff's contract status for the school year 1979-80 in the executive session preceding the regular board meeting of April 17, 1979. There is also no doubt about the fact that there were separate contacts and discussions about this subject prior to April 17 and after April 17 until April 24 as between board president, Henry Angelo and Mrs. Swan, and separately as between Mr. Angelo and Mrs. Miller. The Court finds, however, that there was never an occasion during the foregoing time intervals when these three board members met together simultaneously, away from a regular or special board meeting and discussed and/or deliberated the subject of plaintiff's contractual status for the 1979-80 school year.

This Court's view of this law is that for such contacts between board members to pass beyond the threshold and become violative of inhibitions of the "Sunshine Law" would require a simultaneous discussion or deliberation of public business by a majority of the board; that is, relating these proscriptions to this case would require that there would be a showing that there was a concurrent discussion of this public business by three or more board members. It is this Court's opinion in interpreting this section of the code that any contact as between board members short of that number and not of that fabric "is insufficient to render invalid the official action of the public body". **The Court holds that the contacts between these three members are described above did not violate Ohio Revised Code Section 121.22(H). (See *Hamilton Classroom Teachers Association, et al. v. Hamilton City School District*, No. CV 78-09-0839 (1979).)**

The dispute in this case can perhaps be best "kernelized" in this syntax. This was not a situation that projected an interpretation of what the defendant school board had the right and power under the law to do, but rather one of analyzing the consequences of what the board did in fact do.

The Court concluded that the plaintiff had a valid limited contract with the defendant board for the 1979-80 school year, and that the efforts by a majority of the defendant board to rescind and nonrenew the plaintiff's contract were improper and without legal effect, and further finds that the plaintiff is entitled to compensatory damages and the equitable relief requested. The Court further finds that the plaintiff's efforts to mitigate were reasonable.

Therefore, it is ORDERED, ADJUDGED, and DECREED that the plaintiff is entitled to be immediately reinstated to the position of supervisor of elementary education for the balance of the 1979-1980 school year pursuant to the terms of her limited contract; that the defendant board and/or any of its officers, administrators, employees, or agents are restrained from preventing the plaintiff from performing all of her duties and responsibilities under her contract; and that she recover as compensatory damages the amount owing to her under her contract at the contract rate of $26,010.00, less the sum of money received by her to date from unemployment compensation, for which the defendant board is to receive credit against the total amount owing under the contract

at the contract rate. The matter of cost apportionment is continued.

/s/ Donald R. Ford

The Honorable Donald R. Ford
Judge Court of Common Pleas
Trumbull County, Ohio

PLAINTIFF'S EXHIBIT A

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
CIVIL DIVISION
Case No. 79 CV 571
DR. ETHEL MIGRA,
Plaintiff,
vs.
WARREN CITY SCHOOL DISTRICT
BOARD OF EDUCATION, et al.,
Defendants.

MOTION TO DISMISS

Now comes the plaintiff, Dr. Ethel D. Migra, and moves the Court to dismiss, without prejudice, the instant cause wherein the issue of the conspiracy and individual board member liability therefore is presently pending herein.

/s/ John R. Vintilla

20221 Center Ridge Road
Cleveland, Ohio 44116
Attorney for Plaintiff

PLAINTIFF'S EXHIBIT B

IN THE COURT OF COMMON PLEAS

Case No. 79-CV-571

County of Trumbull)
) ss.
State of Ohio)

DOCTOR ETHEL D. MIGRA,

Plaintiff,

vs.

WARREN CITY SCHOOL DISTRICT, BOARD OF EDUCATION, et al.,

Defendants.

JUDGMENT ENTRY

(Filed July 9, 1980)

Matter before the Court on Plaintiff's application to dismiss, without prejudice, the second cause of action contained in her original complaint, which raises the general issue of conspiracy, and which was reserved by the Court by prior order, and, thus, is not the subject of an appeal before the Eleventh District Court of Appeals in Case Number 2860 therein. Therefore, the Court finds that it has jurisdiction to rule on this motion.

MOTION GRANTED.

/s/ Donald R. Ford
Judge Donald R. Ford

DATE: 6-9-80.